

City of Brisbane Agenda Report

TO: Honorable Mayor and City Council

FROM: Director of Public Works/City Engineer via City Manager

SUBJECT: Resolution No. 2009-50 Approving Joint Sewer Line

DATE: November 9, 2009

City Council Goals:

To provide for effective and efficient delivery of City services. (#1)

To maintain and improve infrastructure. (#3)

Purpose:

To formally approve the use of a joint sewer line and to ensure appropriate recordation of this approval.

Recommendation

1. Approve Resolution No. 2009-50, "Granting Approval for a Joint Sewer Line Across 357 Humboldt Road and 4 Lehning Way to Serve Uphill Addresses on Humboldt Road."
2. Direct the City Clerk to file a copy of the approved resolution in each of the address files for the three (3) properties identified in same.
3. Direct the City Clerk to forward the "Joint Sewer Line Agreement" to San Mateo County for recordation, and to file a copy of the recorded agreement in each of the three (3) properties' address files.

Background:

One of the challenges with development of central Brisbane is the issue of joint private sewer lines. In the steeper terrain portions of the City; typically, several homes on the downhill side of a street could come together at a joint line in a private easement traversing a property on the uphill side of the next lower road, and then join the public sewer system in a lower street in lieu of installing a pump system.

When properly maintained, these lines are no more problematic than the City's public system; unfortunately, private lines in many cases are neglected, and when problems do

arise that create sanitary sewer overflows there is often a lack of “enthusiasm” from the serviced parties to contribute financially to the required repairs. The Municipal Code’s prohibition on joint sewer lines, unless formally approved by the Council, seems to acknowledge this difficulty. Unless homeowners are able to obtain an appropriate downhill easement for their single sewer lateral, or are able to obtain the consensus of all parties served by a joint sewer lateral, the only other option available during a remodel or new development project is to install a pump system to deliver the house’s sewage to the City street “above” and contiguous with their property.

The signed Agreement was prepared by the City Attorney for conformance with Municipal Code §13.04.430. The joint sewer line will satisfactorily provide gravity service to the two (2) uphill addresses in the 300 block of Humboldt Road and place no additional burden on the existing easement traversing 4 Lehning Way.

Discussion:

Pump systems are not preferred due to their reliance on electric power and the requirement for a storage tank; shared private laterals where the parties have not agreed to maintain the line are also poor choices for preventing sewer overflows.

Fiscal Impact:

None as a result of the actions recommended herein.

Measure of Success

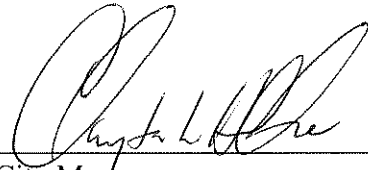
A properly designed and installed private sewer lateral, and an underlying agreement between all the property owners serviced by this lateral to share maintenance costs.

Attachments:

- Resolution No. 2009-50
- Joint Sewer Line Agreement dated 11/02/09



Director of Public Works/City Engineer



City Manager

RESOLUTION NO. 2009-50

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF
BRISBANE GRANTING APPROVAL FOR A JOINT SEWER LINE
ACROSS 357 HUMBOLDT ROAD AND 4 LEHNING WAY TO SERVE
UPHILL ADDRESSES ON HUMBOLDT ROAD**

WHEREAS, conditions are such that the Brisbane Director of Public Works/City Engineer finds the only practical means of connecting certain properties on Humboldt Road to the City's public sewer system using a gravity line is through a joint sewer line; and

WHEREAS, the Director of Public Works/City Engineer recommends the City Council waive the "five (5) feet in width" easement requirement found in paragraph 13.04.430.G of the Municipal Code and allow a four (4) feet in width easement for the portion of this private joint sewer line traversing 4 Lehning Way; and

WHEREAS, the parties wishing to use this line have petitioned the Council to find good cause therefore to grant approval for the joint sewer line that runs generally north to south along the rear property line of 357 Humboldt Road through a ten feet (10') wide easement as granted by Official Record 2008-084709 recorded on July 22, 2008, Official Records of San Mateo County, California; and then continuing generally southerly across 4 Lehning Way through a four feet (4') wide easement as granted by instrument recorded on January 14, 1976, in Book 7025, Page 723, Official Records of San Mateo County, California; and

WHEREAS, the parties petitioning the Council have all signed a "Joint Sewer Line Agreement" dated 11/02/09, said document being prepared by the Brisbane City Attorney for conformance with Section 13.04.430 of the Municipal Code and recorded separately in the Official Records of San Mateo County,

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Brisbane as follows:

1. Pursuant to Section 13.04.430 of the Municipal Code, approval is granted for the joint sewer line traversing the ten feet (10') wide easement on the

property at 357 Humboldt Road and the four feet (4') wide easement on the property at 4 Lehning Way for the purpose of providing gravity sewer service to the following described parcels:

353 Humboldt Road, Assessor's Parcel Number 007-313-190

357 Humboldt Road, Assessor's Parcel Number 007-313-200

Sepi A. Richardson, Mayor

I hereby certify that the foregoing Resolution No. 2009-50 was duly and regularly adopted at the regular meeting of the Brisbane City Council on November 9, 2009 by the following vote:

AYES:

NOES:

ABSTAIN:

ABSENT:

Sheri Marie Spediacci, City Clerk

RECORDING REQUESTED BY:

AFTER RECORDATION MAIL TO:

THIS SPACE FOR RECORDER'S USE

JOINT SEWER LINE AGREEMENT

THIS AGREEMENT, dated 11/02/09, 2009, by and between David D. Cooper, as Trustee of the DAVID D. COOPER TRUST and TAMI LEE QUAN, collectively referred to herein as Owners, is made with reference to the following facts:

A. TAMI LEE QUAN ("Quan") is the owner of the real property located at 353 HUMBOLDT ROAD, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-313-190 and more particularly described as "Parcel 1 after LLA" in Exhibit "A" attached hereto and made a part hereof.

B. DAVID D. COOPER TRUST ("Cooper") is the owner of the real property located at 357 HUMBOLDT ROAD, in the City of Brisbane, County of San Mateo, State of California, identified as Assessor's Parcel Number 007-313-200, and more particularly described as "Parcel 2 after LLA" in Exhibit "A" attached hereto and made a part hereof.

C. Owners share an existing sanitary sewer line that runs generally north to south along the rear property line of Parcel 2 through a ten foot (10') wide easement in favor of Quan as granted by Official Record 2008-084709 recorded on July 22, 2008, Official Records of San Mateo County, California (the "Easement"), and then exiting Parcel 1 and continuing generally southerly through a four foot (4') wide easement as granted by instrument recorded on January 14, 1976, in Book 7025, Page 723, Official Records of San Mateo County, California (the "Grant Deed"). The Easement and the Grant Deed are collectively referred to herein as the "Sewer Easement."

D. Owners desire to upgrade the existing joint sanitary sewer line located within the Sewer Easement and have applied to the City of Brisbane ("City") for approval to

construct such facility. The upgraded sewer line will remain a private facility, to be owned and maintained by Owners, and will not be dedicated to City.

E. City is willing to approve the proposed upgraded joint sewer line, on condition that the facility is constructed in accordance with plans and specifications approved by City's Director of Public Works/City Engineer, and on the further condition that Owners substantially comply with the requirements of Section 13.04.430 of the Brisbane Municipal Code pertaining to the installation and maintenance of joint sewer lines.

F. Owners desire to enter into this Agreement for the purpose of establishing their respective rights and obligations with regard to the joint sewer line and to implement the requirements of Section 13.04.430 of the Brisbane Municipal Code.

NOW, THEREFORE, the parties agree as follows:

1. The upgraded joint sewer line shall be located entirely within the Sewer Easement, shall be designed in compliance with all applicable building codes, and shall be constructed in accordance with plans and specifications approved in writing by City's Director of Public Works/City Engineer. Prior to the commencement of any work, Owners shall obtain from City all permits and other approvals for the work as may be required by the Brisbane Municipal Code and shall pay all fees and costs relating thereto.

2. City may inspect the work at any time or times during the course of construction. The completed joint sewer line shall not be placed into service until final inspection approval of the facility has been issued by City.

3. All costs of installation, maintenance, repair, and replacement of the joint sewer line shall be shared equally by Owners. In the event of any failure or refusal by any Owner to pay that Owner's share of the cost, the remaining Owners may advance such cost and bring appropriate legal proceedings against the delinquent Owner for collection of the same, plus costs and attorney's fees. In the event the owner of any other property desires to connect to the joint sewer line, and provided the joint sewer line has sufficient capacity to accommodate the additional sewage flow, the connecting owner shall be required to reimburse Owners for a proportionate share of all costs and expenses incurred by Owners

to that time for the construction, maintenance and repair of the joint sewer line. The connecting owner shall also be required to become a party to this Agreement and be bound by all of the terms and conditions contained herein.

4. Decisions relating to the installation, maintenance, repair or replacement of the joint sewer line shall be made by the Owners (with multiple owners of the same property being counted as a single Owner); *provided, however*, in the event emergency repairs to the joint sewer line are needed and all of the Owners cannot be immediately contacted, any of the Owners may authorize the emergency repair work to be performed and such Owner shall be entitled to collect a proportionate share of the cost from the non-consenting Owner.

5. No Owner shall interrupt the continuity of service provided by the joint sewer line in a manner that will cause damage or interfere with use of the sewer line by the other Owner, other than such reasonable interruption as may be necessary for the performance of needed maintenance, repairs or replacements.

6. In the event of any failure by Owners to maintain the joint sewer line in proper operating condition and City determines that the sewer line is in a condition that presents a hazard to the public health or safety, City may give Owners written notice to perform the corrective work and upon the failure by Owners to do so within the time specified in the notice, City may cause such work to be performed and charge each Owner an equal share of all costs and expenses City may incur in connection therewith. Should any Owner fail to pay such charges within fifteen (15) days from the date of billing, City may bring a civil action against the delinquent Owner for collection of such charges and City may also record a nuisance abatement lien against the delinquent Owner's property and foreclose the same in accordance with the provisions of Chapter 8.36 of the Brisbane Municipal Code.

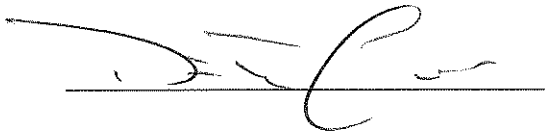
7. The joint sewer line shall be and remain a private facility owned entirely by Owners and will not be offered for dedication to City. Owners acknowledge that City has no responsibility for maintenance or repair of the joint sewer line, nor shall City have any liability for any loss or damage to persons or property resulting from any failure or malfunction of the joint sewer line. Owners shall indemnify, defend and hold City harmless

from and against any claim, demand, cost, expense, or liability, including attorney's fees, arising from or related to the ownership or operation of the joint sewer line or the failure by Owners to perform any of their obligations under this Agreement.

8. In the event legal action shall become necessary to enforce or interpret this Agreement, the prevailing party or parties shall be entitled to recover all costs and expenses that may be incurred in connection therewith, including reasonable attorney's fees.

9. This Agreement shall constitute a covenant running with the land and shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, personal representatives, successors and assigns of the parties.

IN WITNESS WHEREOF, Owners have executed this Agreement the day and year first above written.



_____, as trustee of the
DAVID D. COOPER TRUST



TAMI LEE QUAN

EXHIBIT "A"

**PARCEL 1 after LLA
(APN 007-313-190)
Property of Tami Lee Quan**

That parcel of real property situate in the City of Brisbane, San Mateo County, California, being Lots 39 and a portion of Lot 40 – Block 27 shown on the map entitled “AMENDED MAP OF SUBDIVISIONS NOS. 1, 2, AND 3 OF THE CITY OF VISTACION”, filed October 14, 1908 in Book 6 of Maps, page 45, San Mateo County Records, described as follows:

Beginning at the southwest corner of said Lot 40, on the easterly line of Humboldt Road;

Thence along said easterly line of Humboldt Road, North 19°08'East 50.00 feet to the northwest corner of said Lot 39;

Thence along the boundary between said Lot 39 & Lot 38, South 70°52'East 110.00 feet to the northeast corner of Lot 39;

Thence along the easterly boundary of said Lots 39 & 40, South 19°08'West 50.00 feet to the southeast corner of said Lot 40;

Thence along the boundary between said Lots 40 & 41, North 70°52'West 55.00 feet;

Thence leaving said boundary at right angles, North 19°08'East 14.34 feet;

Thence parallel to said boundary between Lots 40 & 41, North 70°52'West 5.52 feet;

Thence North 84°01'42"West 38.11 feet and South 84°31'07"West 13.61 feet to the Point of Beginning.

Containing 5014 square feet, more or less.

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PARCEL 2 after LLA
(APN 007-313-200)
Property of David D. Cooper Trust

That parcel of real property situate in the City of Brisbane, San Mateo County, California, being Lots 41, 42 and a portion of Lot 40 – Block 27 shown on the map entitled “AMENDED MAP OF SUBDIVISIONS NOS. 1, 2, AND 3 OF THE CITY OF VISTACION”, filed October 14, 1908 in Book 6 of Maps, page 45, San Mateo County Records, described as follows:

Beginning at the northwest corner of said Lot 41, on the easterly line of Humboldt Road;

Thence along said easterly line of Humboldt Road, South 19°08'West 50.00 feet to the southwest corner of said Lot 42;

Thence along the boundary between said Lot 42 & Lot 43, South 70°52'East 110.00 feet to the southeast corner of Lot 42;

Thence along the easterly boundary of said Lots 42 & 41, South 19°08'West 50.00 feet to the northeast corner of said Lot 41;

Thence along the boundary between said Lots 40 & 41, North 70°52'West 55.00 feet;

Thence leaving said boundary at right angles, North 19°08'East 14.34 feet;

Thence parallel to said boundary between Lots 40 & 41, North 70°52'West 5.52 feet;

Thence North 84°01'42"West 38.11 feet and South 84°31.07"West 13.61 feet to the Point of Beginning.

Containing 5986 square feet, more or less.